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SUBJECT: SOMALIA: DEMARCHE REQUEST ON UNSC SOMALIA PIRACY
RESOLUTION

REF: STATE 129528

¶1. This is an action cable. Posts are instructed to demarche host governments at a high level about our draft Security Council resolution on Somalia piracy currently being debated in the Security Council. USUN may use points and background provided in this cable in the experts meeting on the resolution scheduled for December 11, 2008.

Objectives

¶2. The objectives of this demarche are:

-- to convince host countries of the need for new robust resolution in the Council to combat Somalia piracy;
-- to dispel any myths about our intentions in this resolution, especially as they pertain to OP4;
-- to answer questions raised by delegates during Thursday's expert meeting.

Background

¶3. Over the last six months the United Nations Security Council (UNSC) has adopted three resolutions on Somalia piracy. However, during the same time period piracy has increased exponentially. While we have been impressed with international efforts to combat Somali piracy to date, including the launching of the EU anti-piracy operation Atalanta, clearly much more needs to be done. We believe the resolution tabled by the United States on Wednesday provides several key tools the international community could use to effectively suppress piracy off the Somali coast. Specifically the resolution encourages the establishment of an international cooperation mechanism to act as a common point of contact between states on all aspects of Somali piracy; provides authority to states and regional organizations cooperating with the TFG to take all necessary measures ashore in Somalia, including in its airspace, to interdict those who are using Somali territory to plan, facilitate or undertake acts of piracy and armed robbery at sea; expands efforts to build judicial capacity to prosecute and incarcerate pirates; and affirms that the existing Somalia sanctions regime would apply to pirate leaders. We hope to adopt this resolution at a ministerial-level meeting of the Security Council on the issue to be held on December 16, 2008.

Instructions

¶4. Posts should draw from the following points to brief all Security Council members on the top two priorities for the U.S. in our resolution (provided in reftel):

-- Operative Paragraph (OP) 3: At the experts meeting on Thursday, several states (China, Libya, Vietnam and Indonesia) spoke in favor of a greater coordinating role for the UN. We would note that in UNSC resolution 1846 the Council asked the Secretary-General to report within three months on what role it may have in battling Somali piracy. We think it would be unwise to prescribe a lead coordinating role at this point for the UN before the report is even published. In the meantime, states involved in anti-piracy efforts need to coordinate more effectively. The U.S. is working on a plan to address this need.

-- OP4: Almost all delegations raised some concerns or questions about this operative paragraph. We very much understand the concern that comes with authorizing new authorities along these lines. We would like to set the record straight on some fundamental questions about our intentions.

-- Why are new authorities needed? Over the last six months, we have seen an exponential growth in piracy off the coast of Somalia. In recent months we have seen Somali pirates expand their area of operations further south. The MV Sirius Star was hijacked 500 nautical miles off the southern Kenyan port city of Mombassa. Several recent unsuccessful attacks by Somali pirates have occurred off the coast of Tanzania. The United States fears that, one reason Somali pirates may be moving further south is due to the increased international naval presence off the Somali coast. The entire coast of Africa from Djibouti to Tanzania is far too great an area to effectively patrol. One way to avoid simply pushing the problem southward would be to interdict pirates on land.

-- What type of operations are we looking to conduct? First, we should note the United States has not taken any decisions to conduct anti-piracy operations ashore. That said, the international community would have the following possible operations available to it: a.) Intelligence, Surveillance, and Reconnaissance (ISR) Missions: required for increased situational awareness on pirate activities, locations, and potential vulnerabilities; b.) Hot pursuit: pursuit ashore after observing an at sea attack; c.) Prevent Pirates Skiffs from Getting Underway: action may be taken if known pirates are observed preparing to get underway; d.) Destruction of Pirate Infrastructure: such as visible assets such as beached skiffs, vehicles, weapon caches, etc. This is of course a non-exhaustive list.

-- What international law would govern our operations? UN Security Council approval provides sufficient authority to undertake the actions envisioned in our text.

-- What do we mean by "interdict"? In certain cases, it might include the capture and transfer of pirates to appropriate law enforcement authorities, similar to the situation that might occur if states captured pirates on the water. However, it can also mean simply the disruption of pirate activity

-- If raised: The United States does not at this time envision capturing pirates on land. Somalia currently lacks the capacity and infrastructure to prosecute suspected pirates. However, we look forward to working with the international community and the Security Council to establish such a mechanism so that Somali pirates captured ashore can face justice. Somali pirates captured at sea, of course could continue to be prosecuted under the UN Convention on the Law of the Sea and the 1988 Convention on the Suppression of Unlawful Acts Against the Safety of Maritime Navigation.

-- If asked: If suspected pirates are captured ashore, the expectation would be that participating countries would transfer the offender to appropriate authorities as soon as possible, once any necessary agreements or arrangements are in place (e.g. such as the efforts currently underway in Kenya).

Point of contact

15. States should report and substantive response to Joseph
JJ. FitzGerald (at fitzgeraldjj@state.gov or 202-647-2641).
As always the Department appreciates posts assistance.
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